

SEP 21 1977

MICHAEL RODAK, JR., CLERK

In The
Supreme Court of the United States

No. 76-1704

W. E. CAMPBELL, SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE COMMONWEALTH OF VIRGINIA, AND THE BOARD OF EDUCATION OF THE COMMONWEALTH OF VIRGINIA,

Appellants,

v.

DANIEL J. KRUSE, ET AL.,

Appellees.

On Appeal from the United States District Court for the
Eastern District of Virginia

APPELLANTS' SUPPLEMENTAL APPENDIX TO
JURISDICTIONAL STATEMENT

ANTHONY F. TROY
Attorney General of Virginia

D. PATRICK LACY, JR.
Chief Deputy Attorney General

WALTER H. RYLAND
Assistant Attorney General

Supreme Court Building
1101 East Broad Street
Richmond, Virginia 23219

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**ORDER OF THE DISTRICT COURT DENYING
DEFENDANTS' MOTION FOR RECONSIDERATION**
(Filed August 30, 1977)

Deeming it just and proper so to do, it is hereby **ADJUDGED** and **ORDERED** that the State education defendants' motion to reconsider the Court's Decree and Order of March 23, 1977 be, and the same is hereby **DENIED**.

Let the Clerk send a copy of this order to all counsel of Record.

/s/ Robert R. Merhige, Jr.

United States District Judge

Date: August 30, 1977

* * *

**ORDER OF THE DISTRICT COURT IMPLEMENTING THE
DECREE AND ORDER OF MARCH 23, 1975**
(Filed August 30, 1977)

In accordance with the Decree and Order of the Court issued under date of March 23, 1977, to the end that said Decree and Order be implemented; it is **ADJUDGED** and **ORDERED** as follows:

(1) Henrico and Fairfax County education defendants, having modified the state's tuition grant system with current funding systems in operation which are not violative of the Constitution are hereby dismissed as defendants in this action; and it is further

(2) **ORDERED** that the defendants continue to provide the same tuition assistance as was previously provided to any member of the plaintiff class who was released from custody of the local welfare department as a result of the Court's Decree and Order under date of March 23, 1977, until

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such time as the state education defendants have implemented Pub. L. 94-142, the "Education for All Handicapped Children Act of 1975," and it is further

(3) ORDERED that applicants for tuition assistance shall apply for tuition pursuant to present policy of the Board. This policy is set forth in Chapter 1.1 of Title 22 of the Code of Virginia and the following documents, "Rules and Regulations for Tuition Assistance for the Education of Handicapped Children in Virginia Attending Approved Non-Sectarian Schools for the Handicapped," "Administrative Requirements and Guidelines for Special Education Programs," "Delivery of Services." For a person applying for a tuition grant pursuant to § 22-10.8(a) as presently written and with the present funding limitations, there shall be no change in present practice. For persons who are unable to avail themselves of the tuition reimbursement grants available pursuant to § 22-10.8(a) because of the lack of financial resources, the following changes will be made in the application procedure:

(A) The Division of Special Education will notify division superintendents to indicate to all tuition assistance applicants that if they are unable to pay either the one-quarter parental contribution or any excess tuition costs over and above the amount of the tuition grant and their failure to pay such costs would prevent the student from enrolling in a private school offering an appropriate special education, they should so indicate at the time of application.

(B) In such a case, the local school division will utilize the procedures herein (including the appeal to the hearing officer if one is sought) to ascertain (i) the amount of money which the parents will be required to pay in order to avail themselves of the tuition reimbursement grants, provided that eligibility for private placement is to be determined

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without regard to the fiscal impact of additional funding; (ii) whether the private school offers an appropriate program; (iii) whether there is any other appropriate program at less cost; and (iv) the parent must produce all financial information requested by the local school division. The local school division will assume responsibility for gathering the information needed to resolve (B) (ii) and (B) (iii).

(C) The local school division (or hearing officer) will recommend a private school which provides an appropriate program and will recommend the total costs of services to be provided by public aid. The parent will satisfy the school division that all other potential sources of funding such as private insurance and public assistance programs have been exhausted.

(D) The Superintendent of Schools will send a notice to each individual identified in the plan of that school division as not being adequately served by the public school program of the opportunity to apply for supplemental assistance under this plan.

(E) If the Division of Special Education of the State Department of Education disagrees with the amount certified by the locality, it will specify an amount believed to be proper and promptly notify the parents that they may appeal the certification to the State Board of Education or a committee thereof. The Board shall afford a due process hearing for all such appellants. Prior notice will be sent to counsel for the plaintiffs for informational purposes.

(F) If the Division of Special Education agrees with the local certification, it will provide 60% of the added expense. The locality will provide 40% of the added expense. The contribution of the State and local school division will be referred to as the Excess Tuition Supplement. It will be in addition to the amount of the tuition grant available pur-

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suant to § 22-10.8(a), other sources of funding available to the parent such as insurance and public assistance programs, and the parental contribution as hereinafter described.

(G) If any locality fails to provide its share of funding pursuant to this section, the State Board of Education is directed to withhold the sum from any appropriated monies earmarked for the locality to which the Board may have access.

(H) The parental contribution will be computed as follows. A base calculation of family income will be made, which shall consist of wages and salaries; self-employment income; dividends, interest, rents, royalties; contributions from persons not living in the home; alimony and child support. This income will be adjusted by deductions for dependents (\$750), dependents in private schools and colleges (\$750), shelter costs (rent/mortgage and utilities) above 30% of the total income; medical costs above 3% of income; medical and disability insurance premiums.

(I) For parents making an application for a nonresidential tuition program, the parental contribution will be 5% of the adjusted income; provided that no contribution will be required where the adjusted income is below \$5,000 per year.

(J) For tuition applications for residential programs, the parental contribution will be 10% of adjusted income; provided that no contribution will be required where the adjusted income is below \$5,000 per year.

(K) In addition, there is a second computation based upon income and non-income assets above \$10,000 respectively. As to income, this will include adjusted income above \$10,000 per year. Non-income assets shall be deemed to consist of the fair market value of stocks, bonds, securities, non-essential personal property, real estate equity and net

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worth of business, as well as cash, savings, and checking accounts. However, only the total amount of assets above \$10,000 shall be subject to this computation. Of this total of income and assets, 25% will also be added to the totals in (I) or (J) above to determine the family responsibility.

(L) Costs which will be included in the above calculations shall include (i) instruction appropriate to the needs of the handicapped pupil, (ii) reasonable charges for room and board, except for charges for room and board in psychiatric care institutions, and institutions accredited as hospitals by the Joint Commission on Accreditation of Hospitals where the admission to such institution or hospital is principally for the provision of psychiatric care rather than special education, (iii) related services including developmental, corrective, and other supportive services (including speech pathology and audiology, physical and occupational therapy, recreation, psychological services). Medical and psychiatric services will be provided for diagnostic purposes only. Such related services must be required to assist the handicapped child to benefit from special education; and (iv) transportation may be provided as in Section 22-10.11 of the Virginia Code. State participation in transportation costs will be limited to 60% of a maximum shared amount to be determined by the State Department of Education consistent with appropriations.

(M) Provided that parents who allege that they lack the resources to provide additional transportation costs which are necessary to avail themselves of the tuition grant may petition the locality for a determination that additional funding is needed and it is further

(4) ORDERED that this plan shall be in effect until such time as the State education defendants have implemented Pub. L. 94-142, the "Education for All Handicapped Children Act of 1975"; and it is further

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(5) ORDERED that any person or persons who has/have currently approved tuition grant but who has/have been unable to avail themselves of the tuition grant because of the lack of resources need not reapply for eligibility. However, that person or persons will have to receive a determination of the new matters described in paragraph 3 above; and it is further

(6) ORDERED that nothing herein shall be deemed to render the parent, child, State or locality ineligible for aid for which they would have been eligible in the absence of the Decree and Order herein. The obligation placed upon the State Board of Education by this plan is solely to supplement aid available from other sources in the absence of the Decree and Order herein. Nothing herein shall be construed to bar eligibility for payment of all or portions of the State or locality's share of the Excess Tuition Supplement from federal funds which would have been available in the absence of the Decree and Order herein. And it is further

(7) ADJUDGED and ORDERED that this action shall be dismissed from the docket with leave for either party to reinstate same for such purposes as may be necessary.

Let the Clerk send a copy of this order to all counsel of record.

/s/ John D. Butzner, Jr.
United States Circuit Judge

/s/ Robert R. Merhige, Jr.
United States District Judge

/s/ D. Dortch Warriner
United States District Judge

Date: August 30, 1977